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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1868

Introduced by Assembly Member Bermudez
(Principal coauthor: Senator Figueroa)
(Coauthors: Assembly Members Koretz, Maze, and Tran)

January 17, 2006

An act to amend ~~Section 5050~~ *Sections 5050 and 5134* of, to add Sections 5035.3, 5050.1, 5050.2, 5096.13, 5096.14, and 5096.15 to, and to add and repeal Section 5096.12 of, the Business and Professions Code, relating to accountancy, *making an appropriation therefor*, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1868, as amended, Bermudez. Accountancy: licensure.

Existing law provides for the licensing and regulation of accountants by the California Board of Accountancy, in the Department of Consumer Affairs. Existing law prohibits a person from engaging in the practice of public accountancy in this state unless he or she holds either a valid permit issued by the board or a

practice privilege, as specified. A violation of this provision is a crime.

This bill would provide that the prohibition against practicing accountancy in California without a license does not apply to a person who holds a valid and current license, registration, certificate, permit, or other authority to practice public accountancy from a foreign country to the extent that he or she is temporarily practicing in this state incident to an engagement in that country, provided that the temporary practice is regulated by the foreign country and performed under the accounting or auditing standards of that country and that the person does not hold himself or herself out as being the holder of a California license or practice privilege. The bill would also, until January 1, 2011, provide that the prohibition against practicing accountancy in California without a license does not apply to a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state to the extent that the practice is temporary and incident to practice in that state, provided that the person or firm does not solicit clients in California ~~and~~, does not assert or imply licensure in California, *and does not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction.*

Existing law authorizes an individual whose principal place of business is not in California and who has a valid and current license, certificate, or permit to practice public accountancy from another state to engage in the practice of public accountancy in California under a practice privilege if certain conditions are met, including notification to the board of intent to practice.

This bill would, until January 1, 2011, permit a certified public accounting firm authorized to practice in another state that does not have an office in this state to practice public accountancy in California through the holder of a practice privilege if certain conditions are met. The bill would require a notification of intent to practice under a practice privilege to include the name of the firm, its address and telephone number, and its federal taxpayer identification number.

This bill would provide that a person who engages in accountancy in California is deemed to have consented to the jurisdiction of the board and is deemed to have appointed the regulatory agency of his or her state or foreign jurisdiction as the person's agent for a service of process in actions or proceedings by or before the board. The bill would, until January 1, 2011, authorize the board to revoke, suspend,

issue a fine, or otherwise restrict an authorization to practice granted to a foreign accounting firm or discipline the holder of that authorization for any act that would be a violation of, or would be grounds for discipline against a licensee or holder of a practice privilege or denial of an accountancy license or practice privilege under, the Business and Professions Code. The bill would allow an application for reinstatement to practice, as specified, and would allow the board to administratively suspend an authorization to practice. The bill would also require the board to amend certain regulations, as specified.

Existing law sets specified fees to be charged by the board, including an annual fee for a practice privilege to be fixed by the board at up to 50% of the biennial renewal fee for an accountant.

This bill would instead require an annual fee for a practice privilege with an authorization to sign attest reports to be set by the board at up to \$125, and for a practice privilege without an authorization to sign attest reports at up to 80% of that fee. The bill would declare the intent of the Legislature that the board adopt emergency regulations providing for a lower fee or no fee for out-of-state accountants who do not sign attest reports for California clients under the practice privilege, as long as the practice privilege program is adequately funded.

Because this bill may increase fees deposited into the Accountancy Fund, a continuously appropriated fund, it would make an appropriation.

Because this bill would subject additional persons to requirements within the *accountancy* licensing provisions, the violation of which is a crime, and because the bill would create new requirements and prohibitions within the licensing provisions, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

This bill would incorporate additional changes in Section 5134 of the Business and Professions Code proposed by SB 503, to be

operative only if SB 503 and this bill are both chaptered and become effective on or before January 1, 2007, but this bill becomes operative first, both bills amend Section 5134 of the Business and Professions Code, and this bill is chaptered last.

Vote: $\frac{2}{3}$. Appropriation: ~~no~~-yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5035.3 is added to the Business and
2 Professions Code, to read:

3 5035.3. For purposes of subdivision (b) of Section 5050 and
4 Sections 5054 and 5096.12, “firm” includes any entity that is
5 authorized or permitted to practice public accountancy as a firm
6 under the laws of another state.

7 SEC. 2. Section 5050 of the Business and Professions Code is
8 amended to read:

9 5050. (a) Except as provided in subdivisions (b) and (c) of
10 this section, in subdivision (a) of Section 5054, and in Section
11 5096.12, no person shall engage in the practice of public
12 accountancy in this state unless the person is the holder of a valid
13 permit to practice public accountancy issued by the board or a
14 holder of a practice privilege pursuant to Article 5.1
15 (commencing with Section 5096).

16 (b) Nothing in this chapter shall prohibit a certified public
17 accountant, a public accountant, or a public accounting firm
18 lawfully practicing in another state from temporarily practicing
19 in this state incident to practice in another state, provided that an
20 individual providing services under this subdivision may not
21 solicit California clients~~and~~, may not assert or imply that the
22 individual is licensed to practice public accountancy in
23 California, *and may not engage in the development,*
24 *implementation, or marketing to California consumers of any*
25 *abusive tax avoidance transaction, as defined in subdivision (c)*
26 *of Section 19753 of the Revenue and Taxation Code.* A firm
27 providing services under this subdivision that is not registered to
28 practice public accountancy in California may not solicit
29 California clients~~and~~, may not assert or imply that the firm is
30 licensed to practice public accountancy in California, *and may*
31 *not engage in the development, implementation, or marketing to*

1 *California consumers of any abusive tax avoidance transaction,*
2 *as defined in subdivision (c) of Section 19753 of the Revenue and*
3 *Taxation Code.* This subdivision shall become inoperative on
4 January 1, 2011.

5 (c) Nothing in this chapter shall prohibit a person who holds a
6 valid and current license, registration, certificate, permit, or other
7 authority to practice public accountancy from a foreign country,
8 and lawfully practicing therein, from temporarily engaging in the
9 practice of public accountancy in this state incident to an
10 engagement in that country, provided that:

11 (1) The temporary practice is regulated by the foreign country
12 and is performed under accounting or auditing standards of that
13 country.

14 (2) The person does not hold himself or herself out as being
15 the holder of a valid California permit to practice public
16 accountancy or the holder of a practice privilege pursuant to
17 Article 5.1 (commencing with Section 5096).

18 SEC. 3. Section 5050.1 is added to the Business and
19 Professions Code, to read:

20 5050.1. (a) Any person that engages in any act that is the
21 practice of public accountancy in this state consents to the
22 personal, subject matter, and disciplinary jurisdiction of the
23 board. This subdivision is declarative of existing law.

24 (b) Any person engaged in the practice of public accountancy
25 under subdivision (a) is deemed to have appointed the regulatory
26 authority of the state or foreign jurisdiction that issued the
27 person's permit, certificate, license or other authorization to
28 practice as the person's agent on whom notice, subpoenas, or
29 other process may be served in any action or proceeding by or
30 before the board against or involving that person.

31 SEC. 4. Section 5050.2 is added to the Business and
32 Professions Code, to read:

33 5050.2. (a) The board may revoke, suspend, issue a fine
34 pursuant to Article 6.5 (commencing with Section 5116), or
35 otherwise restrict or discipline the holder of an authorization to
36 practice under subdivision (b) or (c) of Section 5050, subdivision
37 (a) of Section 5054, or Section 5096.12 for any act that would be
38 a violation of this code or grounds for discipline against a
39 licensee or holder of a practice privilege, or ground for denial of
40 a license or practice privilege under this code. The provisions of

1 the Administrative Procedure Act, including, but not limited to,
2 the commencement of a disciplinary proceeding by the filing of
3 an accusation by the board shall apply to this section. Any person
4 whose authorization to practice under subdivision (b) or (c) of
5 Section 5050, subdivision (a) of Section 5054, or Section
6 5096.12 has been revoked may apply for reinstatement of the
7 authorization to practice under subdivision (b) or (c) of Section
8 5050, subdivision (b) of Section 5054, or Section 5096.12 not
9 less than one year after the effective date of the board's decision
10 revoking the authorization to practice unless a longer time, not to
11 exceed three years, is specified in the board's decision revoking
12 the authorization to practice.

13 (b) The board may administratively suspend the authorization
14 of any person to practice under subdivision (b) or (c) of Section
15 5050, subdivision (a) of Section 5054, or Section 5096.12 for any
16 act that would be grounds for administrative suspension under
17 Section 5096.4 utilizing the procedures set forth in that section.

18 SEC. 5. Section 5096.12 is added to the Business and
19 Professions Code, to read:

20 5096.12. (a) A certified public accounting firm that is
21 authorized to practice in another state and that does not have an
22 office in this state may engage in the practice of public
23 accountancy in this state through the holder of a practice
24 privilege provided that:

25 (1) The practice of public accountancy by the firm is limited to
26 authorized practice by the holder of the practice privilege.

27 (2) A firm that engages in practice under this section is
28 deemed to consent to the personal, subject matter, and
29 disciplinary jurisdiction of the board with respect to any practice
30 under this section.

31 (b) The board may revoke, suspend, issue a fine pursuant to
32 Article 6.5 (commencing with Section 5116), or otherwise
33 restrict or discipline the firm for any act that would be grounds
34 for discipline against a holder of a practice privilege through
35 which the firm practices.

36 (c) This section shall become inoperative on January 1, 2011,
37 and as of that date is repealed.

38 SEC. 6. Section 5096.13 is added to the Business and
39 Professions Code, to read:

1 5096.13. The notification of intent to practice under a practice
2 privilege pursuant to Section 5096 shall include the name of the
3 firm, its address and telephone number, and its federal taxpayer
4 identification number.

5 SEC. 7. Section 5096.14 is added to the Business and
6 Professions Code, to read:

7 5096.14. The board shall amend Section 30 of Article 4 of
8 Division 1 of Title 16 of the California Code of Regulations to
9 extend the current “safe harbor” period from December 31, 2007,
10 to December 31, 2010.

11 SEC. 8. Section 5096.15 is added to the Business and
12 Professions Code, to read:

13 5096.15. It is the intent of the Legislature that the board adopt
14 regulations providing for a lower fee or no fee for out-of-state
15 accountants who do not sign attest reports for California clients
16 under the practice privilege. These regulations shall—~~assure~~
17 *ensure* that the practice privilege program is adequately funded.
18 *These regulations shall be adopted as emergency regulations in*
19 *accordance with Chapter 3.5 (commencing with Section 11340)*
20 *of Part 1 of Division 3 of Title 2 of the Government Code and, for*
21 *purposes of that chapter, the adoption of the regulations shall be*
22 *considered by the Office of Administrative Law to be necessary*
23 *for the immediate preservation of the public peace, health and*
24 *safety, and general welfare.*

25 SEC. 9. Section 5134 of the Business and Professions Code is
26 amended to read:

27 5134. The amount of fees prescribed by this chapter is as
28 follows:

29 (a) The fee to be charged to each applicant for the certified
30 public accountant examination shall be fixed by the board at an
31 amount to equal the actual cost to the board of the purchase or
32 development of the examination, plus the estimated cost to the
33 board of administering the examination and shall not exceed six
34 hundred dollars (\$600). The board may charge a reexamination
35 fee equal to the actual cost to the board of the purchase or
36 development of the examination or any of its component parts,
37 plus the estimated cost to the board of administering the
38 examination and not to exceed seventy-five dollars (\$75) for each
39 part that is subject to reexamination.

1 (b) The fee to be charged to out-of-state candidates for the
2 certified public accountant examination shall be fixed by the
3 board at an amount equal to the estimated cost to the board of
4 administering the examination and shall not exceed six hundred
5 dollars (\$600) per candidate.

6 (c) The application fee to be charged to each applicant for
7 issuance of a certified public accountant certificate shall be fixed
8 by the board at an amount equal to the estimated administrative
9 cost to the board of processing and issuing the certificate and
10 shall not exceed two hundred fifty dollars (\$250).

11 (d) The application fee to be charged to each applicant for
12 issuance of a certified public accountant certificate by waiver of
13 examination shall be fixed by the board at an amount equal to the
14 estimated administrative cost to the board of processing and
15 issuing the certificate and shall not exceed two hundred fifty
16 dollars (\$250).

17 (e) The fee to be charged to each applicant for registration as a
18 partnership or professional corporation shall be fixed by the
19 board at an amount equal to the estimated administrative cost to
20 the board of processing and issuing the registration and shall not
21 exceed two hundred fifty dollars (\$250).

22 (f) The board shall fix the biennial renewal fee so that,
23 together with the estimated amount from revenue other than that
24 generated by subdivisions (a) to (e), inclusive, the reserve
25 balance in the board's contingent fund shall be equal to
26 approximately nine months of annual authorized expenditures.
27 Any increase in the renewal fee made after July 1, 1990, shall be
28 effective upon a determination by the board, by regulation
29 adopted pursuant to subdivision (k), that additional moneys are
30 required to fund authorized expenditures other than those
31 specified in subdivisions (a) to (e), inclusive, and maintain the
32 board's contingent fund reserve balance equal to nine months of
33 estimated annual authorized expenditures in the fiscal year in
34 which the expenditures will occur. The biennial fee for the
35 renewal of each of the permits to engage in the practice of public
36 accountancy specified in Section 5070 shall not exceed two
37 hundred fifty dollars (\$250).

38 (g) The delinquency fee shall be 50 percent of the accrued
39 renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) *(1) On and after January 1, 2006 the enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 with an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 50 percent of the biennial renewal fee provided in subdivision (f) one hundred twenty-five dollars (\$125).*

(2) On and after enactment of Assembly Bill 1868 of the 2005–06 Regular Session, the annual fee to be charged an individual for a practice privilege pursuant to Section 5096 without an authorization to sign attest reports shall be fixed by the board at an amount not to exceed 80 percent of the fee authorized under paragraph (1).

(j) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars (\$25).

(k) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(l) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(m) Fees collected pursuant to subdivisions (a) to (e), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee

1 is assessed, as projected for the fiscal year commencing on the
2 date the fees become effective.

3 *SEC. 10. Section 5134 of the Business and Professions Code*
4 *is amended to read:*

5 5134. The amount of fees prescribed by this chapter is as
6 follows:

7 (a) The fee to be charged to each applicant for the certified
8 public accountant examination shall be fixed by the board at an
9 amount ~~to equal the actual cost to the board of the purchase or~~
10 ~~development of the examination, plus the estimated cost to the~~
11 ~~board of administering the examination and shall not to exceed~~
12 ~~six hundred dollars (\$600). The board may charge a~~
13 ~~reexamination fee equal to the actual cost to the board of the~~
14 ~~purchase or development of the examination or any of its~~
15 ~~component parts, plus the estimated cost to the board of~~
16 ~~administering the examination and not to exceed seventy-five~~
17 ~~dollars (\$75) for each part that is subject to reexamination.~~

18 (b) The fee to be charged to out-of-state candidates for the
19 certified public accountant examination shall be fixed by the
20 board at an amount ~~equal to the estimated cost to the board of~~
21 ~~administering the examination and shall not to exceed six~~
22 ~~hundred dollars (\$600) per candidate.~~

23 (c) The application fee to be charged to each applicant for
24 issuance of a certified public accountant certificate shall be fixed
25 by the board at an amount ~~equal to the estimated administrative~~
26 ~~cost to the board of processing and issuing the certificate and~~
27 ~~shall not to exceed two hundred fifty dollars (\$250).~~

28 (d) The application fee to be charged to each applicant for
29 issuance of a certified public accountant certificate by waiver of
30 examination shall be fixed by the board at an amount ~~equal to the~~
31 ~~estimated administrative cost to the board of processing and~~
32 ~~issuing the certificate and shall not to exceed two hundred fifty~~
33 ~~dollars (\$250).~~

34 (e) The fee to be charged to each applicant for registration as a
35 partnership or professional corporation shall be fixed by the
36 board at an amount ~~equal to the estimated administrative cost to~~
37 ~~the board of processing and issuing the registration and shall not~~
38 ~~to exceed two hundred fifty dollars (\$250).~~

39 (f) The board shall fix the biennial renewal fee so that,
40 together with the estimated amount from revenue other than that

1 generated by subdivisions (a) to (e), inclusive, the reserve
2 balance in the board's contingent fund shall be equal to
3 approximately nine months of annual authorized expenditures.
4 Any increase in the renewal fee ~~made after July 1, 1990~~, shall be
5 *effective made by regulation* upon a determination by the board;
6 ~~by regulation adopted pursuant to subdivision (k)~~, that additional
7 moneys are required to fund authorized expenditures ~~other than~~
8 ~~those specified in subdivisions (a) to (e), inclusive~~, and maintain
9 the board's contingent fund reserve balance equal to nine months
10 of estimated annual authorized expenditures in the fiscal year in
11 which the expenditures will occur. The biennial fee for the
12 renewal of each of the permits to engage in the practice of public
13 accountancy specified in Section 5070 shall not exceed two
14 hundred fifty dollars (\$250).

15 (g) The delinquency fee shall be 50 percent of the accrued
16 renewal fee.

17 (h) The initial permit fee is an amount equal to the renewal fee
18 in effect on the last regular renewal date before the date on which
19 the permit is issued, except that, if the permit is issued one year
20 or less before it will expire, then the initial permit fee is an
21 amount equal to 50 percent of the renewal fee in effect on the last
22 regular renewal date before the date on which the permit is
23 issued. The board may, by regulation, provide for the waiver or
24 refund of the initial permit fee where the permit is issued less
25 than 45 days before the date on which it will expire.

26 (i) ~~(1) On and after January 1, 2006 the enactment of~~
27 *Assembly Bill 1868 of the 2005-2006 Regular Session*, the annual
28 fee to be charged an individual for a practice privilege pursuant
29 to Section 5096 *with an authorization to sign attest reports* shall
30 be fixed by the board at an amount not to exceed ~~50 percent of~~
31 ~~the biennial renewal fee provided in subdivision (f)~~ *one hundred*
32 *twenty-five dollars (\$125)*.

33 *(2) On and after enactment of Assembly Bill 1868 of the*
34 *2005-2006 Regular Session, the annual fee to be charged an*
35 *individual for a practice privilege pursuant to Section 5096*
36 *without an authorization to sign attest reports shall be fixed by*
37 *the board at an amount not to exceed 80 percent of the fee*
38 *authorized under paragraph (1).*

39 (j) The fee to be charged for the certification of documents
40 evidencing passage of the certified public accountant

1 examination, the certification of documents evidencing the
2 grades received on the certified public accountant examination,
3 or the certification of documents evidencing licensure shall be
4 twenty-five dollars (\$25).

5 ~~(k) The actual and estimated costs referred to in this section~~
6 ~~shall be calculated every two years using a survey of all costs~~
7 ~~attributable to the applicable subdivision.~~

8 ~~(l) Upon the effective date of this section the~~

9 (k) The board shall fix the fees in accordance with the limits of
10 this section and, on and after July 1, 1990, any increase in ~~any a~~
11 fee fixed by the board shall be pursuant to regulation duly
12 adopted by the board in accordance with the limits of this
13 section.

14 ~~(m) Fees collected pursuant to subdivisions (a) to (e),~~
15 ~~inclusive, shall be fixed by the board in amounts necessary to~~
16 ~~recover the actual costs of providing the service for which the fee~~
17 ~~is assessed, as projected for the fiscal year commencing on the~~
18 ~~date the fees become effective.~~

19 (l) *It is the intent of the Legislature that, to ease entry into the*
20 *public accounting profession in California, any administrative*
21 *cost to the board related to the certified public accountant*
22 *examination or issuance of the certified public accountant*
23 *certificate that exceeds the maximum fees authorized by this*
24 *section shall be covered by the fees charged for the biennial*
25 *renewal of the permit to practice.*

26 *SEC. 11. Section 10 of this bill incorporates amendments to*
27 *Section 5134 of the Business and Professions Code proposed by*
28 *both this bill and SB 503. It shall only become operative if (1)*
29 *both bills are enacted and become effective on or before January*
30 *1, 2007, but this bill becomes operative first, (2) each bill*
31 *amends Section 5134 of the Business and Professions Code, and*
32 *(3) this bill is enacted after SB 503, in which case Section 5134*
33 *of the Business and Professions Code, as amended by Section 9*
34 *of this bill, shall remain operative only until the operative date of*
35 *SB 503, at which time Section 10 of this bill shall become*
36 *operative.*

37 ~~SEC. 9.~~

38 *SEC. 12. No reimbursement is required by this act pursuant to*
39 *Section 6 of Article XIII B of the California Constitution because*
40 *the only costs that may be incurred by a local agency or school*

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the
3 penalty for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition of a
5 crime within the meaning of Section 6 of Article XIII B of the
6 California Constitution.

7 ~~SEC. 10.~~

8 *SEC. 13.* This act is an urgency statute necessary for the
9 immediate preservation of the public peace, health, or safety
10 within the meaning of Article IV of the Constitution and shall go
11 into immediate effect. The facts constituting the necessity are:

12 In order that accountants licensed by another jurisdiction be
13 permitted to lawfully provide services to their clients in
14 California as soon as possible, it is necessary that this bill take
15 effect immediately.